

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653-KRH
Debtors.)	
)	
TREMOR MEDIA, INC.,)	Jointly Administered
Movant,)	
v.)	Hearing Date: April 14, 2009 at 10:00 a.m.
)	
CIRCUIT CITY STORES, INC.,)	Objection Deadline: April 7, 2009
Respondent.)	

**APPLICATION FOR THE ALLOWANCE AND PAYMENT OF THE
PRIORITY ADMINISTRATIVE EXPENSE CLAIM OF TREMOR MEDIA, INC.**

Tremor Media, Inc. ("Tremor Media"), by and through undersigned counsel, hereby files this application (the "Application") and moves the Court, pursuant to 11 U.S.C. § 503, for entry of an order allowing an administrative priority expense claim (the "Administrative Expense Claim") for services provided to Circuit City Stores, Inc. (the "Debtor") post-petition. In support of this Application, Tremor Media respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2) and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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Counsel for Tremor Media, Inc.

BACKGROUND

2. Tremor Media is the leading online video advertising network providing advertisers with both in-banner and in-stream video advertising opportunities on over 1,400 top-tier publisher sites with more than 135 million unique visitors per month.

3. Tremor Media and the Debtor had a long-standing relationship whereby Tremor Media provided online advertising services for the Debtor.

4. The Debtor would purchase online advertising from Tremor Media by submitting written requests ("Insertion Orders") for such advertising, which terms were typically governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, Version 2.0.

5. The Debtor was billed for its advertising on a "pay per click" basis. In other words (and as is customary in the industry) the Debtor paid Tremor Media an agreed amount each time an internet user "clicked" on one of the Debtor's online advertisements. The amount charged per click is commonly referred to as the "Cost Per Click" or "CPC".

6. On November 10, 2008 (the "Petition Date"), the Debtor commenced the above-captioned bankruptcy case by filing a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

7. The Debtor is operating as a Debtor in Possession pursuant to 11 U.S.C. § 1107.

8. Subsequent to the Petition Date, and pursuant to the ordinary course of dealings between the parties, the Debtor engaged Tremor Media to provide online internet advertising (the "Advertising") by submitting Insertion Orders for such Advertising to Tremor Media.

9. Tremor Media provided the requested Advertising pursuant to the Insertion Orders received from the Debtor, and billed the Debtor for such Advertising according to the agreed Cost Per Click (CPC), as provided in the Insertion Orders.

10. Specifically, Tremor Media provided and billed the Debtor for \$341,926.50 worth of

Advertising in December, 2008 and \$78,321.75 worth of Advertising in January, 2009, for a total of \$420,248.25. True and correct copies of the relevant invoices and Insertion Orders are attached hereto as Exhibit "A".

11. To date, the Debtor has not paid for such post-petition Advertising in the amount of \$420,248.25.

RELIEF REQUESTED AND BASIS THEREFORE

12. Tremor Media hereby requests that the Court allow its claim with administrative expense priority in the amount of \$420,248.25 for unpaid post-petition Advertising.

13. 11 U.S.C. § 503 permits the allowance of claims with administrative expense priority. Section 503(a) provides that "[a]n entity may timely file a request for payment of an administrative expense[.]" 11 U.S.C. § 503(a).

14. 11 U.S.C. § 503(b) provides that an administrative expense claim must be: (a) an actual, necessary cost and expense of preserving the estate; which was (b) rendered after the commencement of the bankruptcy.

15. The Advertising was an actual, necessary cost and expense of preserving the estate. Specifically, Tremor Media provided the Advertising to the Debtor, at the request of the Debtor, and the Advertising provided a benefit to the Debtor's estate. See Devan v. Simon DeBartolo Group, L.P. (In re Merry-Go-Round Enters., Inc.), 180 F.3d 149, 157 (4th Cir. 1999).

16. The Advertising was provided to the Debtor after the Petition Date.

17. As the Advertising was (a) an actual, necessary cost and expense of preserving the estate; which was (b) rendered after the commencement of the bankruptcy, it should be allowed and paid as an 11 U.S.C. § 503(b) administrative priority claim.

WAIVER OF MEMORANDUM OF LAW

18. Because this motion presents no novel issues of law and the authorities relied upon by Tremor Media are set forth herein, Tremor Media respectfully avers that no separate brief is necessary pursuant to Local Rule 9013-1(G).

CONCLUSION

WHEREFORE, Tremor Media, Inc. respectfully requests that the Court enter an Order, substantially in the form attached hereto: (a) allowing Tremor Media, Inc. a claim in the amount of \$420,248.25, with administrative expense priority and (b) granting such other relief as the Court deems just and proper.

Dated: March 13, 2009.

TREMOR MEDIA, INC.

By: 

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a professional corporation
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Phone: (757) 624-3252
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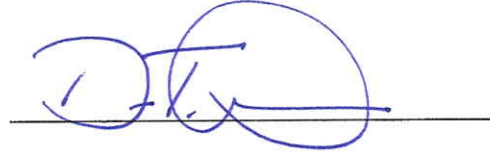
-and-

John G. Loughnane, Esq.
Eckert Seamans Cherin & Mellott, LLC
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Boston, MA 02110
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Fax: (617) 342-6899

1454119\1

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application for the Allowance and Payment of the Priority Administrative Expense Claim of Tremor Media, Inc. was mailed first-class, postage prepaid U.S. Mail, this 13th day of March, 2009, to the parties listed on Schedule 1 and sent via electronic mail to all creditors and parties-in-interest who are included in the Bankruptcy Court's ECF e-mail notification system.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "J. K. [unclear]".

1454119\1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i> ,)	Case No. 08-35653-KRH
Debtors.)	
)	
TREMOR MEDIA, INC.,)	Jointly Administered
Movant,)	
v.)	
)	
CIRCUIT CITY STORES, INC.,)	
Respondent.)	

**ORDER GRANTING THE ALLOWANCE AND PAYMENT OF THE
ADMINISTRATIVE EXPENSE CLAIM OF TREMOR MEDIA, INC.**

This matter having come before the Court on the Application for Allowance and Payment of the Priority Administrative Expense Claim of Tremor Media, Inc. (the "Application"); and it appearing that notice of the Application was good and sufficient under the particular circumstances and that no other or further notice need be given; and the Court having considered the Application, and any Responses thereto; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

ORDERED that Tremor Media, Inc. has an allowed priority administrative claim in the amount of \$420,248.25.

Dated: _____, 2009

United States Bankruptcy Judge

Dennis T. Lewandowski, Esq. (VSB No. 22232)
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Counsel for Tremor Media, Inc.

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Page 1

Order Date: 10/20/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost
12/01/08-12/31/08	BANNER	728X90	TREMO DECEMBER	600,000	CLICK		.25 CPC	\$150,000.00
	ADDITIONAL INFO:		DECEMBER CAMPAIGN RUNS 11/30/08-1/3/09					
12/01/08-12/31/08	BANNER	728X90	TREMO DEC BONUS	30,000	CLICK		CPC	\$0.00
	ADDITIONAL INFO:		DECEMBER CAMPAIGN RUNS 11/30/08-1/3/09					
	TOTALS:			630,000			.24 CPC	\$150,000.00

1. Please sign and fax back to 804.418.8107, attn: Danielle Duncan
2. Please remit invoices to: Circuit City Stores, Inc. 9954 Mayland Drive, Richmond, VA 23233 attn: Danielle Duncan
3. Either party may cancel this agreement at any time with two (2) business days advance written notice
4. Circuit City will only be responsible for payment of media delivered through the date of termination
5. Circuit City uses Truflight and/or Pointroll let part ad-serving and will accept no more than a 10% discrepancy between reported and billed impressions. In the event of a dispute, all pertinent information will be made available upon request
6. As Circuit City is placing multiple campaigns,

10/24/08
113

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 10/20/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTRACT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERTION ORDER *

Page 2

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHANDER

122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates Ad Unit Size Format
Please label invoices with corresponding campaign name, which is indicated above
7. Any advertising network shall sign and adhere to Circuit City's Network Compliance Memo during the course of this campaign
8. This ID is governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, version 2.0

..... Measurement
Rate Total Cost

Authorized Vendor Signatory
per _____
Signature _____
Andrew Klein, agent for Tremor Media, Inc.
Chief Operating Officer
Date: 12/12/08

Authorized by Agency
Issued by: DANIELLE DUNCAN

12/12/08
2-13 @

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 10/29/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

***** INSERTION ORDER *****

Page 3

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA

LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

INS. DATE	AD UNIT	SIZE	PAYMENT	SECH	B D U L E	TARGET	WEBS. TYPE	COST
DEC01/08	BANNER	728X30				600,000	CLICK	\$150,000.00
DEC01/08	BANNER	728X30				30,000	CLICK	\$0.00
TOTALS:								\$150,000.00
								N

3/3

10/24/08

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 11/21/08 Order Number: 00409
Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERTION ORDER *

Page 1

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Measurement	Rate	Total Cost
12/01/08-12/31/08	BANNER	728X90	DECEMBER ADDITION	400,000	CLICK	.25 CPC	\$100,000.00
	ADD'L INFO:		DECEMBER ADDITION DATES: 11/29 - 1/3				
12/01/08-12/31/08	BANNER	728X90	DECEMBER ADDITION	20,000	CLICK	CPC	\$0.00
	ADD'L INFO:		DECEMBER ADDITION DATES: 11/29 - 1/3				
			5% BONDS				
	TOTALS:			420,000		.24 CPC	\$100,000.00
							N

1. Sign and fax back to Julie Borill 804-418-8107
2. Remit invoices to Circuit City Stores, Inc 9954 Mayland Drive, Richmond, VA 23233 attn: Julie Borill
3. Either party may cancel this agreement at any time with two business days advance written notice
4. Circuit City will be responsible for payment for media delivered through the date of termination only
5. Circuit City uses TrueEffect and/or Pointroll advertising and will accept no more than a 10% discrepancy between reported and billed impressions. In the event of a dispute, all pertinent information will be made available upon request

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 11/21/08 Order Number: 00409
Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERTION ORDER *

Page 2

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA

LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates Ad Unit Size Format
6. As Circuit City is placing multiple campaigns,
please label invoices with corresponding name
as indicated above
7. Any advertising network shall sign and adhere to
Circuit City's Network Compliance memo during
the course of this campaign
8. This IO is governed by the Internet Advertising
Bureau's Standard Terms and Conditions for
Internet Advertising, version 2.0

Target Type Measurement Rate Total Cost

Authorized Vendor Signature
per 

Authorized by Agency
Issued By: TATIANA TOROIAN

 Mike Parilli

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 12/05/08 Order Number: 00422
Activity Date: 12/05/08 - 12/11/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERTION ORDER *

Page 2


Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost
6. As Circuit City is placing multiple campaigns, please label the invoices with the corresponding campaign name as indicated above								
7. Any advertising network shall sign and adhere to Circuit City's Network Compliance Memo								
8. This IO is governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, version 2.0								

Authorized Vendor Signature
per

Signature: 
Andrew Funes, Agent for Tremor Media, Inc.
Chief Operating Officer
Date: 12-15-08

Authorized by Agency
Issued By JULIE BORILL

12/15/08
212

Bill From:

Bill To:

AR Contact: Lenny Pentaya/Alex Vogt

Phone # (646) 278-2031

Fax # (646) 224-8474

Email 20-5480343

CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 12/22/08 Order Number: 00424
Activity Date: 01/04/09 - 01/31/09

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 00109 - DIRECT DISPLAY: JANUARY 2009

* INSERTION ORDER *

Page 1

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA

LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost
01/04/09-01/31/09	BANNER	728X90	JANUARY RICH MEDIA	1,000,000	CLICK		.25 CPC	\$250,000.00
	ADD'L INFO:		EXPANDABLE BANNER					
01/04/09-01/31/09	BANNER	728X90	JANUARY RICH MEDIA	50,000	CLICK		CPC	\$0.00
	ADD'L INFO:		EXPANDABLE BANNER BONUS CLICKS					
TOTALS:				1,050,000			.24 CPC	\$250,000.00

1. Sign and return to julie_borill@circuitcity.com or fax to 804.418.8107
2. Remit invoices to Circuit City Stores, Inc. 9954 Mayland Drive, Richmond, VA 23233 attn: Julie Borill
3. Either party may cancel this agreement at any time with 2 business days advance written notice
4. Circuit City will only be responsible for payment of media delivered through the date of termination
5. Circuit City uses TrueEffect and/or Pointroll ad serving and will accept no more than a 10% discrepancy between reported and billed impressions
6. As Circuit City is placing multiple campaigns please label invoices with corresponding campaign name as indicated above

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CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

Order Date: 12/22/08 Order Number: 00424
Activity Date: 01/04/09 - 01/31/09

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 00109 - DIRECT DISPLAY: JANUARY 2009

* INSERTION ORDER *

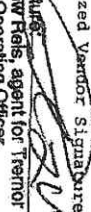
Page 2

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost
7. Any ad network shall sign and adhere to Circuit City's Network Compliance Memo								
8. This IO is governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, version 2.0								

Authorized Vendor Signature
per 
Andrew Reis, agent for Tremor Media, Inc.
Chief Operating Officer
Date: 1/22/09

Authorized by Agency
Issued by JULE BORILL

10